

WaiversFirst Name Last Name Claim Number

W-18-0011

Amount OGC Received Date Assigned To Assigned Date

\$371.89 05/04/2018 Mary O'Lone 05/07/2018

EPA Decision EPA Decision Date Amount Approved Status

DENIED 05/21/2019 CLOSED

Appeal Comments

No 5/21/19 Claim denied.

5/20/19 draft denial sent to Ken. Employee knew or should have known of the overpayment.

4/24/19 [REDACTED] says he doesn't have an email notification of SF50.

4/23/19 CFC followed up with [REDACTED] about notification of SF50.

10/10/18 CFC says employee on military leave until March 2019.

8/23/18 asked CFC to get copy of email [REDACTED] received notifying him of his SF 50 approved March 4, 2016.

8/22/18 6/11/18 IBC sent ELSs

6/6/18 asked Jessica C for the 4 LESs.

6/4/2018 asked for copies of the LES right before promotion and LESs where overpayment occurred.

March 4, 2016 letter from EPA confirming his promotion stated annual salary for Dallas was \$89,383. SF50 for the promotion (block 20C) shows Adjusted Basic Pay as \$95,343. Name and Location of Position's Organization shows Dallas; however, the Duty Station in the SF50 (block 39) states "Houston, Harris, Texas."

OARM processed a promotion action for [REDACTED] from a GS 12 to GS 13. The promotion was erroneously processed for the Houston area, rather than the Dallas area. When the correction was processed, it resulted in a debt of \$371.89

Type

Locality Pay

Attachments

[REDACTED]:

This email is in response to your "Waiver of Indebtedness Application" (W-18-0011) dated April 20, 2018, wherein you have requested approval of a waiver of debt in the amount of \$455.99. For the reasons set forth below, your request for a waiver is denied.

Background

On March 6, 2016 you were promoted to a [REDACTED] [REDACTED] with a duty station of Dallas, TX. You received a letter from EPA dated March 4, 2016 confirming "your acceptance of a

Promotion as a [REDACTED]

The SF-50

dated March 4, 2016, effective March 6, 2016 erroneously listed your duty station as Houston, Texas. Houston had a higher locality pay rate than Dallas.

The first ELS issued after your promotion was for pay period 07 in 2016 with a pay date of March 30, 2016. This ELS listed your duty station as Texas without indicating a specific city and listed your annual salary as \$95,343. The ELS for pay period 08, which ended on April 2, 2016 with a pay date of April 12, 2016, also listed your salary as \$95,343. You stated that you first became aware of the error on April 4, 2016 and notified your office which contacted EPA's Shared Service Center to alert them of the error. On April 6, 2016, you received a response from EPA's Shared Service Center in Cincinnati acknowledging and apologizing for the error and stating it would fix it.

An SF 50 was issued on April 21, 2016 retroactive to March 22, 2016 listing your duty station as Dallas, Texas. Accordingly, the Interior Business Center (IBC) at the Department of Interior sent you a Bill for Collection dated April 25, 2016 (Debt ID: Q1170266097) stating that you owe a debt of \$371.89 for salary overpayments in pay periods 07 and 08 in 2016.

In response to the Bill for Collection, you timely submitted a request for a waiver dated May 2, 2016. In support of your application, you state that you were "not aware of the error because all corresponding documents indicated Dallas as my HOR" and you believe it would be against equity and good conscience for EPA to collect the debt.

#### Analysis

Under 5 U.S.C. § 5584, I have the authority to waive claims for overpayments of compensation and allowances if collection would be against equity and good conscience and not in the best interests of the United States. "Such authority may not be exercised if there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim." B-231018 (August 2, 1989). In the present case, I find that the overpayments were caused by Agency administrative error and not due to fraud or misrepresentation on your part.

Generally, an employee who knows or reasonably should have known that he or she was overpaid should be prepared to repay the debt and it is not against equity and good conscience to collect. B-227322 (September 19,

1988). The employee is generally deemed to be at fault in those situations. B-271308 (April 18, 1996). In determining whether an employee's actions are reasonable with regard to an overpayment, I may examine such matters as the employee's position, knowledge, experience and length of service. B-22383 (October 10, 1986). Your ELS for pay period 07 of 2016 states your service comp date as July 20, 2008. At the time of the erroneous payment you had been an EPA employee for over 7 years. It is my view that your experience as an EPA employee would have caused a reasonable person to carefully scrutinize all documents pertaining to pay, particularly at the time of promotion.

The next question is whether you were aware or should have suspected a pay error based upon information available to you. Generally, "if an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action, then the employee is not without fault and waiver will be denied." B-231018 (August 2, 1989). The SF50 issued March 4, 2016 erroneously lists your duty station as Houston, Texas with a pay of \$95,343; therefore, you knew or should have known that there would likely be an overpayment in your coming paycheck. The possibility of overpayment was confirmed by the ELS for pay period 07 which showed the higher annual salary (\$95,343) than was quoted in the March 4, 2016 letter (\$89,383). On April 4, 2016, within a few working days of receipt of your first paycheck, you raised questions about your pay.

You received confirmation from EPA of the error before your paycheck for pay period 08 of 2016 was issued. The ELS for pay period 08 also showed the higher annual salary of \$95,343. Therefore, you knew that you were again being overpaid in pay period 08. Employees who are aware of receiving erroneous overpayments not only have a responsibility to notify responsible agency officials, but also should "be prepared to make repayment upon correction of the error; the employee cannot reasonably expect to retain the overpayments." B- 256828 (August 2, 1994) citing B 234731 (June 19, 1989); B 227322 (Sept. 19, 1988).

Based on the discussion above, I find that it is not against equity and good conscience to collect the \$371.89 that your Bill for Collection states that you owe. Accordingly, your waiver request is denied.

I trust this email is responsive to your claim, and I am sorry a more favorable reply cannot be made. Under 40 C.F.R. part 13.11(e)(iii), I have the delegated authority to waive all or part of the interest, penalty, and administrative charges which have accrued on this debt. In this regard, I am directing that EPA waive any portion that may have accrued that is attributable to interest, penalty, and administrative

charges.

By copy of this email to Heather Bell in EPA's Cincinnati Finance Center, I am advising that collection of this debt should proceed consistent with this email. You have the right to request reconsideration of the denial of the claim. In a request for reconsideration, you must present new factual information that might cause the Claims Officer to overturn the prior decision.

Please be advised that a waiver is one of several options for debtors. EPA will notify you of the opportunity to request a compromise, suspension, or termination of your debt based on factors that include inability to pay.